ANALYSIS

Employment Department
Paid Family and Medical Leave Insurance

Analyst: Michelle Deister

Request: Acknowledge receipt of a report on collection of Paid Family and Medical Leave Insurance contributions and repayment of General Fund-supported startup costs related to the program.

Analysis: House Bill 5007 (2021) -- the budget bill for the Employment Department -- included the following budget note:

> The Employment Department is directed to work with the Legislative Fiscal Office to report to an appropriate legislative committee on progress toward collecting Paid Family and Medical Leave Insurance Program contributions and repayment of General Fund-supported start up costs related to the program. The report or reports shall include information related to rates, collection amounts, repayment schedules, program implementation schedules, and associated factors which may influence forecasts and outcomes.

The Oregon Employment Department (OED) reports that by biennium's end, it expects to have collected $276.8 million in contributions, sufficient to repay $6.1 million in General Fund operating costs attributable to the 2019-21 biennium, $47.1 million General Fund supported costs for the 2021-23 biennium and $9.95 million Other Funds operating costs. Collections are scheduled to begin January 1, 2023 and projected to total $276.8 million by June 30, 2023, assuming collection of the maximum statutorily permitted contribution rate of one percent of payroll. Employees will make 60% of the contribution, with the remaining 40% contributed by employers. The contribution rate for the subsequent calendar year is set annually by the Director of the Department.

Risks that could impact this timeline include the following:

- Management and leadership turnover within the Paid Family and Medical Leave Insurance (PFMLI) program may impact the development of key decisions and rules adoption that define program elements necessary to implement collections).
  - OED has mitigated this risk by recruiting and extending offers of employment to three key positions, and these employees will start in February 2022.
- Delays in adopting program rules and definitions surrounding contribution details.
  - OED reports that rule adoption is currently on schedule and has adopted its first "batch" of program administrative rules, which will soon be posted. The second batch of rules have been proposed in consultation with advisory groups and stakeholders. The final grouping of rules is in development. Internal processes that aren't part of the formal rule process (such as the forms or checklists based on the rules that need to be developed for employee use, and detailed plans for handing off information between different divisions when necessary) are still in development.
- Recruitment and training, for line staff and/or information technology systems professionals
  - Like other employers, OED is coping with a tight labor market. Recruitment risks may be somewhat mitigated if employees currently occupying limited duration positions choose to apply for permanent positions in the PFMLI program. However, training any

employees will be challenging due to the newness of the program - processes are likely to be refined as issues are identified.

- Information Technology (IT) systems development and testing
    - IT systems are under development and are expected to be tested in time to be able to accept and report contributions. OED will have a 'soft rollout' of its modernized Unemployment Insurance (UI) and PFMLI Tax and Contribution in system in September 2022, when PFMLI equivalent plan information and employer UI quarterly reporting is due. This will enable the Department to have access to UI data, as well a window for identifying and fixing any issues before PFMLI collections are due in January 2023.
- Communication plans with employers and employees
    - OED must make employers and employees aware of the obligation to contribute under the new PFMLI program, effectively communicate how those contributions are to be made, and provide education on how to report using the new system. The agency has a third-party contract with a firm who has done similar work in Washington. OED must also maintain regular and clear internal communication with OED employees about the new program rollout, training, duties, and processes.

Recommendation: The Legislative Fiscal Office recommends acknowledging receipt of the report.

Oregon

Employment Department
875 Union Street NE
Salem, Oregon 97311
503.947.1394
TTY-TDD 711
www.Employment.Oregon.gov
State of Oregon Employment Department

January 14, 2022

Senator Elizabeth Steiner Hayward, Co-Chair
Representative Dan Rayfield, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, Oregon 97301-4048

Dear Co-Chairs:

Nature of the Emergency/Request

The Legislative Assembly passed House Bill 5007 in the 2021 Regular Session. House Bill 5007 included the following budget note requesting the Oregon Employment Department (agency) provide a report to the Legislature:

> The Employment Department is directed to work with the Legislative Fiscal Office to report to an appropriate legislative committee on progress toward collecting Paid Family and Medical Leave Insurance Program contributions and repayment of General Fund-supported startup costs related to the program. The report or reports shall include information related to rates, collection amounts, repayment schedules, program implementation schedules, and associated factors which may influence forecasts and outcomes.

Agency Action

The enactment of House Bill 3398 in July 2021 adjusted the date for commencement of contributions collection from January 2022 to January 2023, and adjusted the date for commencement of payment of benefits and small business grants from January 2023 to September 2023. The agency has conducted, and continues to update, actuarial analyses evaluating the projected health of the Paid Family and Medical Leave Insurance Program Trust Fund with respect to its adequacy for funding to repay the General Fund-supported startup costs while maintaining a balance sufficient for program operations and benefit payments. Actuarial analyses to date indicate adequate funds will be available to cover expected Trust Fund outflows, including repayment of the General Fund startup costs by the expected date of June 30, 2023.

The agency continues to make essential decisions needed for the implementation of the program and is on schedule to meet upcoming milestones.

Background

In 2019 the Oregon Legislature directed the agency to establish a Paid Family and Medical Leave Insurance (PFMLI) program, with collection of contributions into the PFMLI Trust Fund to begin on January 1, 2022, and payment of benefits to eligible individuals to begin on January 1, 2023. By the time ORS chapter 657B (the PFMLI statutes) became effective in September 2019, the agency had already initiated planning for this new program. The PFMLI program, once implemented, will provide employees with compensated time off from work to:

- Care for and bond with a child during the first year of the child's birth or arrival through adoption or foster care;
- Provide care for a family member who has a serious health condition or to recover from an employee's own serious health condition;
- Take leave related to domestic violence, stalking, sexual assault, or harassment (safe leave).

ORS chapter 657B established an ambitious initial timeline for implementing the Paid Family and Medical Leave Insurance program. The ensuing onset of the COVID-19 pandemic and the agency's responsibility to focus substantial efforts on administering unemployment insurance (UI) benefits required an adjustment to the original timeline. HB 3398 was enacted in July 2021 to adjust the implementation timeline. Since the timeline adjustment, the agency has worked to make essential decisions needed for the successful implementation of the program and the establishment of the new program within the structure of the agency.

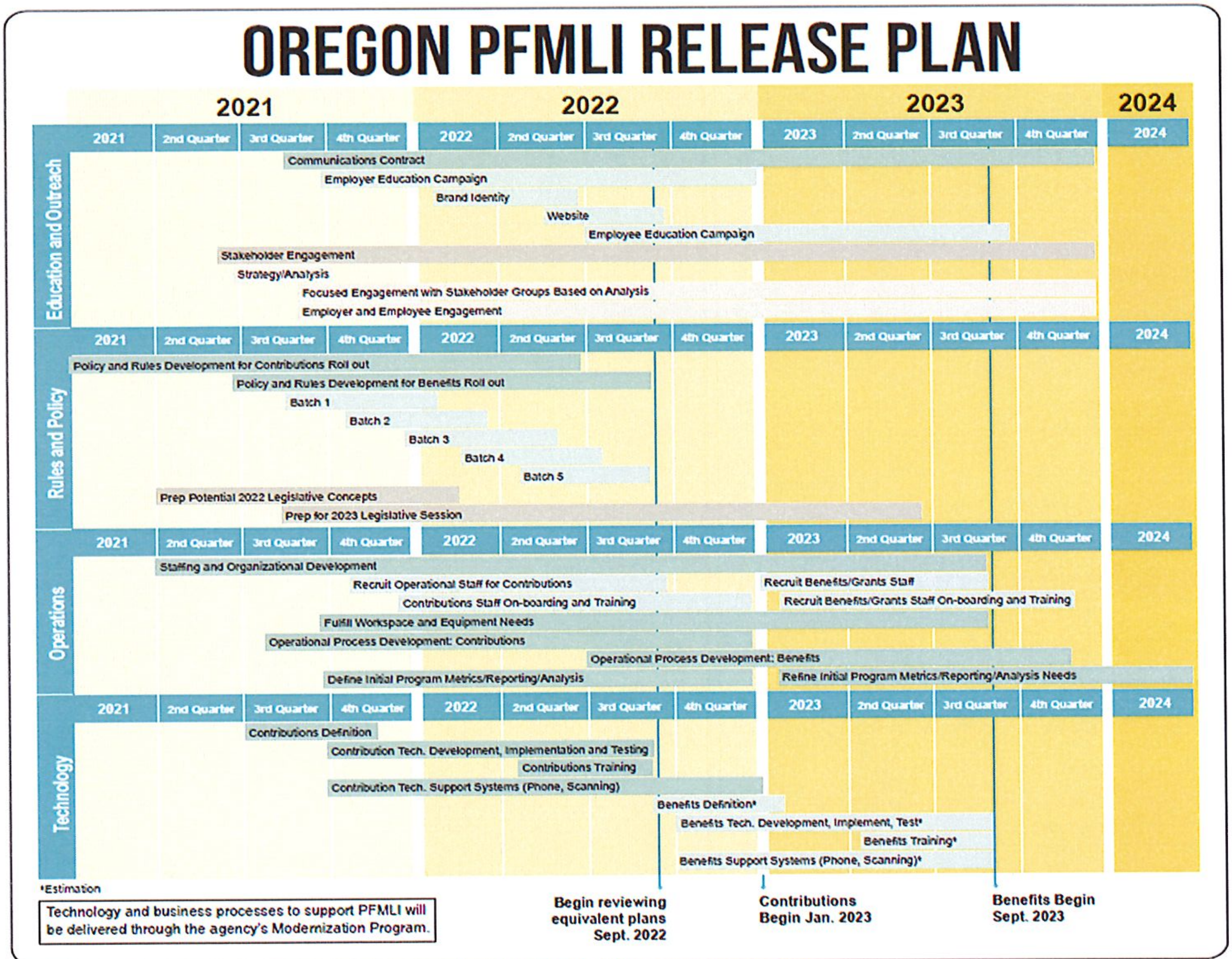
The implementation of the PFMLI program is a complex set of technical and systems work, and one that is being done while the agency is also modernizing its UI systems, something that offers both programs opportunities to better serve the public, yet it also adds complexities. Our ongoing monitoring of the risks to a successful project continue to show it in overall 'red' status, reflecting the high degree of complexity and many challenges to successfully overcome. This status also reflects our commitment to being successful, which requires careful monitoring of and transparent communication about risks. Like many other states, while we will successfully implement PFMLI, we anticipate it is likely to remain in red status throughout the initial launch, reflecting the many risks we are actively avoiding, mitigating, and managing.

<u>PFMLI Program Implementation Progress</u>

The program implementation is using a hybrid agile project management methodology. The implementation work streams are guided by an integrated master schedule of work items that span the project lifecycle, enabling progress to be tracked against service delivery milestones with four public-facing work streams as highlighted in the Release Plan Graphic:

Oregon

Employment Department



Oregon Employment Department | Oregon.gov/Employ | EDPUB216 (1021)

Implementation Schedule Updates by Work Stream

Education and Outreach

We have entered into a contract with Brink Communications to help with this important work, and the initial components of the Employer Engagement Campaign began immediately. Brink completed a survey of Oregon employers to gauge awareness of the program and is using the survey results to assist with the establishment of the program's brand identity for future communication, education, and outreach work. We have continued identification and engagement with stakeholders and are encouraging ongoing involvement through the newsletter, list serve, and rulemaking process.

The agency is following the communication plan for 2022 focused on building awareness of the program, support for it, and ensuring good, ongoing feedback from and engagement with the public about PFMLI.

Rules and Policy
The rules and policy schedule has been established in coordination with the timeline adjustments for implementation. An initial batch of 35 administrative rules were posted in the Oregon Bulletin in November 2021 and are in the formal rulemaking process. A second batch of administrative rules are soon to follow, and a third batch are being drafted and we are beginning the initial review with the Rulemaking Advisory Committee (RAC). The agency worked in collaboration with stakeholders and partner agencies in the development of a legislative concept (LC 254) related to the definition of benefit year for the upcoming 2022 legislative session. Further, the agency beginning work on 2023 legislative concepts. Importantly, the agency continues to have extensive engagement with the PFMLI Advisory Committee and the public about the rules--even prior to the formal rulemaking process starting.

Operations
The agency has made the decision to develop a centralized approach for collecting PFMLI and UI contributions by establishing a new combined unit. This operational decision was made to provide the best service possible to the public and to ensure that employers will be able to work with a single group of staff who can help them with their combined payroll reporting filings, PFMLI contributions and UI tax payments, and related matters, ensuring successful operations for the collection of PFMLI contributions. This structure is consistent with the statutory charge to have the PFMLI contributions be part of the combined payroll reporting system, and will provide not only better service to the public, but also increased operational efficiency. Work is underway to finalize the long-term staffing and organizational structure within the PFMLI program and to further develop what is needed operationally to implement PFMLI.

Technology
Project Sponsors for the agency Modernization Project (including the PFMLI Director) have made the decision to configure Frances (the modernized technology system providing contributions and benefits functions) to utilize a centralized approach for audit, collection, and billing. This means the PFMLI contributions solution will be part of an integrated system handling both PFMLI contributions and UI tax. This change was approved by the Legislative Fiscal Office and the Enterprise Information Services office through Stage Gate oversite and the contributions technology system is in active development and configuration. The system is on track to be available to begin collecting PFMLI contributions in January 2023. Both PFMLI contributions and UI tax customers will have:

- a single contact when dealing with audit and compliance issues,
- combined notices for billing and collections, and
- a single contact for collection efforts.

PFMLI Contributions and Trust Fund Forecast

Collection of PFMLI contributions will begin January 1, 2023, and PFMLI benefit (including small business grant) payments will begin eight months later on September 3, 2023. The projected revenue, expenditures, and PFMLI Trust Fund balance is shown in the table below.

By statute, the PFMLI Trust Fund solvency target is based on a contribution rate that is set so that at the end of the period for when the contribution rate is effective, the balance in the PFMLI Trust Fund is not less than six months' projected expenditures (ORS 657B.150). Assuming a one percent contribution rate for 2023 and 2024, the projected PFMLI Trust Fund balance at the end of 2023 will have just about six months reserve, therefore, just meeting the solvency target. However, the reserve will continue to build, as the projected PFMLI Trust Fund balance is expected to include approximately nine months reserve at the end of 2024.

OREGON EMPLOYMENT DEPARTMENT
PAID FAMILY AND MEDICAL LEAVE PROJECTIONS

PFMLI Revenue, Expenditures, and Trust Fund Balance
Forecast as of 11/25/2021

Biennium	2021-23	2023-25
(A) Beginning Fund Balance		213,673,384
Revenue		
(B) General Fund Loan to PFML Insurance fund		
(C) Collections (begin 1/1/23)	276,763,812	2,273,697,911
(D) Fees (Employer Equivalent Plans)	22,500	45,000
(E) Interest and Penalties		10,322,265
(F) Interest on Fund	169	32,316,989
(G) Subtotal (B+C+D+E+F)	**276,786,481**	**2,316,382,165**
Expenditures		
(H) General Fund Loan Repayment	53,162,258	
(I) Benefit Payments (begin 9/3/2023)		1,553,502,555
(J) Grant Payments		1,713,830
(K) Administrative Costs*	9,950,839	100,687,090
(L) Subtotal (H+I+J+K)	**63,113,097**	**1,655,903,475**
(M) Ending Fund Balance (A+G-L)	**213,673,384**	**874,152,074**

*2021-23 Administrative Costs reflect only the OF portion of Administrative Costs. 2023-25 costs are all OF

With the maximum statutorily permitted contribution rate of one percent, the program is anticipating sufficient revenue from contributions and other sources (equivalent plan application fee, interest earned on trust fund, etc.) to allow the agency to repay the General Fund loan by the end of the 21-23 biennium (June 30, 2023). The methodology for making annual projections is being put into a proposed administrative rule.

One of the assumptions made for purposes of these projections is that the initial PFMLI contribution rate will be one percent of payroll. By statute, the Director of the Employment Department sets the contribution rate annually, which cannot be more than one percent of payroll (with 60 percent of the rate being paid by employees, and 40 percent by employers). The initial contribution rate for the calendar year 2023 has not been set yet. Ongoing actuarial analyses are being done by the agency, reflecting changing economic conditions and additional data that becoming available. This will be reviewed with the PFMLI Advisory Committee who will make a recommendation to the OED Director on the rate for 2023. We anticipate the Director will set that rate in September 2022.

With PFMLI being a new program in Oregon, some key considerations we are looking at for the initial contribution rate setting are larger than the usual uncertainty with projections. While data from other states with recent implementation of PFMLI programs is instructive, much of it reflects the pandemic time period, which may not be typical of what will be seen in 2023. Additionally, there are significant differences between PFMLI program in Oregon and other states. The initial contributions must not only fund the payment of benefits and ongoing operational expenses but also repay the General Fund loan for implementing the PFMLI program. While the original statutory implementation timeframe provided a year of collecting contributions before any benefits were paid, the current timeframe shortens this collection period, with benefits being paid only after eight months of contributions. Finally, if the initial rates are set too low, the PFMLI Trust Fund could run out of money, which means no further benefits would be paid until additional contributions are received. However, if the initial rates are set higher than needed, it could result in the following years' contribution rate being set lower to bring the PFMLI Trust Fund back to the targeted solvency level.

<u>PFMLI Benefits</u>

The Modernization Executive Steering Committee approved the change request to add PFMLI benefits technology and business processes to the scope of the Modernization Program. Work will continue to move forward to accommodate the increased scope of work by updating Modernization program and project plans as well as vendor contracts. Modernization work in technology, communication, organizational change management, and stakeholder engagement has been re-evaluated, aligned, and coordinated to incorporate PFMLI benefits. While still an aggressive timeline for work of this scale, we remain on track to begin paying PFMLI benefits in September 2023.

Oregon

Employment Department

Action Requested
The Oregon Employment Department requests acceptance of this report.

Legislation Affected
None

Sincerely,

David Gerstenfeld

Acting Director, Oregon Employment Department

cc: Amanda Beital, Legislative Fiscal Office
Michelle Deister, Legislative Fiscal Office
Sean McSpaden, Legislative Fiscal Office
George Naughton, DAS Chief Financial Office
Tamara Brickman, DAS Chief Financial Office